WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1941

IN THE MATTER OF:		Served December 14, 1978
Application of THE BALTIMORE AND ANNAPOLIS RAILROAD COMPANY for Certificate of Public Convenience and Necessity	)	Application No. 87
Application of THE BALTIMORE AND ANNAPOLIS RAILROAD COMPANY for Certificate of Public Convenience and Necessity to Perform Charter Operations	)	Application No. 947 Docket No. 334
Order to Show Cause Directed to THE BALTIMORE AND ANNAPOLIS RAILROAD COMPANY	)	Docket No. 334

By Order No. 1870, served August 8, 1978, the Commission reopened Application No. 87 and granted The Baltimore and Annapolis Railroad Company (B & A) 60 days to notify the Commission of its intent to prosecute said application, dismissed Application No. 947 and directed B & A to cease and desist from rendering any for-hire passenger transportation between points solely within the Metropolitan District. The cease and desist provision, however, was stayed for 60 days to enable B & A to renew and prosecute Application No. 87. B & A's application for reconsideration of Order No. 1870 was denied by Order No. 1899, served October 4, 1978.

On November 29, 1978, B & A filed a petition with the United States Court of Appeals for the District of Columbia Circuit asking the Court to review and set aside Order Nos. 1870 and 1899. On the same day, it filed with this Commission an application for a stay of said orders.

In support of its application for a stay, B & A notes that F.R.A.P. 18 provides, as pertinent, that "/a_/pplication for a stay of a decision or order of an agency pending direct review in the court of appeals shall ordinarily be made in the first instance to the agency." B & A asserts that, while review of these orders is pending in the Court of Appeals, the public should not be deprived of the motor bus transportation allegedly furnished continuously by B & A for almost 20 years.

In Washington Metropolitan Area Transit Commission v. Holiday Tours, 559 F.2d 841 (D. C. Circuit 1977), the Court refined the criteria applicable to motions to stay an administrative order. See also Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D. C. Circuit 1958) and A Quaker Action Group v. Hickel, 421 F.2d 1111 (D. C. Circuit 1969). We must consider (1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal? (2) Has the petitioner shown that without such relief, it will be irreparably injured? (3) Would the issuance of a stay substantially harm other parties interested in the proceedings? and (4) Where lies the public interest. Holiday Tours, supra, at 843. The necessary showing on the merits is governed by the balance of equities as revealed through an examination of the other three factors. A tribunal may properly stay its own order when it has ruled on an admittedly difficult legal question and when the equities of the case suggest that the status quo should be maintained. Holiday Tours, supra, at 844-845.

Examining, then, the equities in this matter, we can perceive no irreparable injury to B & A from allowing the cease and desist directive to remain in effect. In fact, no allegation of irreparable harm is even raised. Assuming, arguendo, that B & A may lose some business which it might legitimately enjoy, there has been no showing that such loss would have a materially adverse affect on B & A. To the contrary, such loss (if any) would appear to be one of the "mere economic injuries which are insufficient to warrant a stay." Virginia Petroleum Jobbers, supra, at 925. Similarly, the record in these proceedings provides no basis for findings with respect to whether other carriers certificated to conduct operations duplicated by those of B & A would suffer substantial harm, should the relief sought be granted.

The Commission also is not persuaded that charter customers will be seriously inconvenienced by requiring B & A to refrain from conducting uncertificated operations. Serveral other certificated carriers plus the Washington Metropolitan Area Transit Authority are capable of providing any charter service rendered by B & A.

In considering the public interest, the Commission must look to the provisions of the Compact for it is there that the intent of the signatories has been codified. The District of Columbia, the State of Maryland and the Commonweath of Virginia, acting in partnership with the Congress of the United States, created this Commission with

> . . . jurisdiction coextensive with the Metropolitan District for the regulation and improvement of transit and the alleviation of traffic congestion within the Metropolitan District on a coordinated basis, without regard for political boundaries. . . .*/

*/ Compact, Title I, Article II.

This constitutes the legislatively declared public interest. Title II of the Compact prescribes the means by which the Commission is to perform these functions and mandates that persons who wish to engage in transportation subject to the Compact comply with certain requirements, including obtaining authority.

Title II, Article XII, Section 4(a) of the Compact mandates that no person shall engage in transportation subject to the Compact unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation. Having determined that B & A's charter operations solely within the Metropolitan District are subject to the Compact, it follows that uncertificated operations should not be performed whether or not a "cease and desist" order is in effect.

In accordance with the provisions of Order No. 366, served June 17, 1964, the Commission afforded B & A an opportunity to prosecute its "grandfather" Application No. 87 to obtain a certificate for those operations found to be subject to the Compact. Application No. 87 was reopened and B & A was granted 60 days in which to notify the Commission of its intent to prosecute that application as provided by Title II, Article XII, Section 4(a) of the Compact. Mindful of the provision in that section that "/p/ending the determination of any such /grandfather/ application, the continuance of such operation shall be lawful", the Commission stayed its cease and desist order for the 60-day period "or for such additional time as the Commission may direct to enable /B & A/ to renew and prosecute Application No. 87."

The 60-day period, of course, has expired, and the cease and desist provision of Order No. 1870 has become effective. B & A has not notified the Commission that it intends to prosecute Application No. 87 and has waived its opportunity to do so. With no pending grandfather application now before the Commission, there exists no legal basis for sanctioning uncertificated operations. Title II, Article XII, Section 4(a) of the Compact provides the only instance where transportation subject to the Compact may be continued absent authority therefor being in effect. In order to get an indefinite extension, all B & A had to do was file a letter indicating its intent to proceed with the grandfather application. B & A spurned this offer and now seeks relief which this Commission cannot grant.

The Commission cannot force B & A to prosecute an application if the carrier does not wish to conduct regulated operations, Montgomery Charter Service, Inc. v. Washington Metropolitan Area Transit Commission, 302 F.2d 906 (D. C. Circuit 1962); where the carrier does wish to conduct regulated operations, however, it is our duty to insist upon compliance with the provisions of the Compact. Our directive that B & A cease and desist from conducting unauthorized charter operations between points solely in the Metropolitan District merely reinforces the obligation already imposed on B & A by the Compact. A stay of this directive, to the extent

that it might be viewed as encouragement to do that which the Compact forbids, would constitute a violation of the public trust which the Commission is charged by law to protect.

The Commission finds no basis in law or in the equities of this case to grant the relief sought. It further finds that it is unlikely that B & A will prevail on the merits of its appeal for the reasons stated in Order Nos. 1870 and 1899.

THEREFORE, IT IS ORDERED that the application of the Baltimore and Annapolis Railroad Company for a stay of Order No. 1870, as affirmed by Order No. 1899, is hereby denied.

BY DIRECTION OF THE COMMISSION:

WILLIAM H. McGILVERY
Executive Director